



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Instruments & Controls Service Co.
File: B-224293.2
Date: February 17, 1987

DIGEST

Prior decision denying protest against nonresponsibility determination is reversed where guarantee of financial backing that contracting officer declined to consider due to its reference to an erroneous solicitation number was otherwise clearly identifiable with the procurement in question.

DECISION

Instruments & Controls Service Co. requests reconsideration of our decision, Instruments & Controls Service Co., B-224293, Nov. 18, 1986, 86-2 CPD ¶ 581, denying its protest of the rejection of its bid under General Services Administration (GSA) invitation for bids (IFB) No. 02-PPB-JM-086-0038 for mechanical maintenance services at the Federal Building in Binghamton, New York. For the reasons that follow, we reverse our decision and sustain the protest.

Instruments & Controls protested the contracting officer's determination that it lacked the financial resources to perform the contract. The protester argued that its bid should have been accepted since its parent company, Eurotherm International, was willing to guarantee its performance. We held that the contracting officer's determination of nonresponsibility was reasonable since the initial letter sent to the agency by the parent prior to award did not in our view constitute a clearly binding guarantee of financial backing.

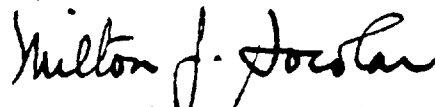
In its request for reconsideration, Instruments & Controls contends that it was unreasonable for the contracting officer to have rejected its initial guarantee letter as not clearly enforceable given that the sole defect in the guarantee was a typographical error in the solicitation number. (Solicitation No. 02-PPB-JM-086-0038 was incorrectly referenced as No. 02PPM/JM0860038.) Instruments & Controls

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argues that the guarantee should have been accepted since it was clearly identifiable with the procurement in question. The protester points out that the incorrect solicitation number in Eurotherm's guarantee referenced no other procurement, either past or present.

We think there is merit to Instruments & Controls' argument. In our November 18 decision, we concluded that it was reasonable for the contracting officer to have decided that Eurotherm's letter might not constitute a binding guarantee for this particular procurement. However, we are now persuaded that this decision by the contracting officer was not reasonable. The agency has not indicated that the erroneous solicitation number could have referred to another ongoing procurement or that Instruments & Controls had submitted a bid in response to another outstanding GSA solicitation. Further, there is nothing in the record that indicates that the contracting activity had any other solicitation outstanding for similar services that could be confused with this procurement. It therefore appears that the guarantee was clearly identifiable with the procurement in question. Consequently, we believe that the guarantee was only technically defective and could in fact be enforced against the parent. See Custodial Guidance Systems, Inc., B-192750, Nov. 21, 1978, 78-2 CPD ¶ 355. We therefore reverse our decision and conclude that the contracting officer acted unreasonably in not considering Eurotherm's guarantee letter. We sustain the protest.

Since the contract term is 3 years and performance commenced on September 1, 1986, contract performance is less than one-sixth complete at this time, and we therefore recommend that GSA terminate the current contract for the convenience of the government and make award for the remainder of the contract term to Instruments & Controls if the guarantee letter is otherwise sufficient.

for 
Comptroller General
of the United States